

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

BL ENTERPRISES, INC. ^{1/}

Employer

and

Case 9-RC-17252

TEAMSTERS LOCAL UNION #284, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO ^{2/}

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ^{3/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

^{1/} The name of the Employer appears as amended at the hearing.

^{2/} The name of the Petitioner appears as amended at the hearing.

^{3/} Both parties have timely filed briefs which I have carefully considered in reaching my decision.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a corporation, is engaged in the business of supplying labor for American Standard at Emerson's warehouse and distribution center located at 3800 Lockbourne Parkway, Columbus, Ohio. The Employer employs approximately 58 employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent a unit comprised of all truckload warehousemen, quick ship warehousemen, and the maintenance employee, but excluding all quick ship and truckload customer service representatives, the inventory coordinator, all office clerical employees, all managerial employees, and all guards and supervisors as defined in the Act. Contrary to the Petitioner, the Employer asserts that the unit, in addition to those employees sought by the Petitioner, must also include the 13 quick ship customer service representatives (herein referred to as the quick ship clericals), two truckload customer service representatives (herein referred to as the truckload clericals), and the inventory coordinator. The Employer maintains that the quick ship and truckload clericals and the inventory coordinator share a community of interest with the employees sought by the Petitioner which mandates their inclusion in the unit. The Petitioner contends, however, that the quick ship and truckload clericals and the inventory coordinator do not share such a substantial community of interest with the other unit employees to require their inclusion in the unit. Finally, the Petitioner maintains if the quick ship and truckload clericals are included in the unit as a group, the daughter and daughter-in-law of the Employer's vice-president, Gary J. Gootee, Sr., should be excluded from the unit based on their relationship to Gootee. The Employer contends that these two individuals have no special status based on their relationship to Gootee and must be included in the unit. Regardless of its contentions, the Petitioner has indicated a willingness to proceed to election in any unit found appropriate.

The warehouse is approximately 200,000 square feet and approximately 150 yards in length. The Employer has a general or main office at the south end of the facility, an office for the quick ship clericals at its north end, and a small shipping and receiving office in the dock area that is utilized by the warehouse team captains. A wall that runs its width from floor to ceiling with the exception of three aisles divides the distribution center. On one side of this dividing wall is the Employer's quick ship warehouse area and on the other side of the wall is its truckload warehouse area. The employees in the quick ship warehouse area are engaged in the warehousing and distribution of plumbing and related products ordered by consumers at a premium price for prompt delivery. The quick ship products are generally more specialized products with more specialized colors. The Employer's labor force in the truckload warehouse area is engaged in the warehousing and distribution of products that depart in truckload quantities, generally stock items. There are approximately 5 dock doors that are used in the quick ship area and 12 doors that are used in the truckload area for shipping and receiving.

Vice-President of Operations Gootee is the Employer's highest-ranking manager at the distribution center. He reports to Larry Fascetti, who is located in Coltsneck, New Jersey. Reporting immediately to Gootee are Assistant Administrator Lynn Holt; Warehouse Team Leader Dan Raver; Quick Ship Coordinator Laurie Preston; Quick Ship Team Captain Wayne Traylor; and Warehousemen Team Captains Eric Derenburger, Tim VanGundy,

Scott Stickel and Aaron Raver. Gootee, Holt and Dan Raver all have desks in the main office area. Additionally, John Petticruw, district manager for American Standard, has a separate office and desk in that area. The two truckload clericals and the inventory coordinator also work out of the main office.

The Employer's warehouse employees work four different shift schedules and are assigned to one of four teams. Teams 1 and 3 are the day shifts and include both quick ship warehouse employees and truckload warehouse employees. Team 1 works the first half of each week from Sunday through Wednesday; they work three 12-hour days from 6 a.m. to 6 p.m. and a half-day on Wednesday. Team 3 works the same schedule for the second half of the week. Teams 2 and 4 are the night shifts and are set up in the same manner as the day shifts; each Team works three 12-hour days and half days on Wednesdays. The truckload portion of the warehouse operates 24 hours a day, 7 days a week compared to the quick ship side of the facility which currently operates only during the day. The four warehouse team captains supervise a total of approximately 23 warehouse employees on four shifts. Traylor, the quick ship team captain, supervises approximately eight quick ship warehousemen on two shifts. Additionally, the warehouse team captains and Traylor supervise 10 probationary warehousemen who work as needed between the two sides of the operation. All employees serve a 30-day probationary period with the Employer having an option of extending an employee's probationary period an additional 30 days for a total of 60 days. Preston is the immediate supervisor for the approximately 13 quick ship clericals. The maintenance employee, inventory coordinator and the two truckload clericals are immediately supervised by Gootee. The 13 quick ship clericals work varying 9-hour shifts from 7 a.m. to 8 p.m., 7 days a week, with a single clerical beginning at 7 a.m. and another concluding at 8 p.m. The inventory coordinator works Monday through Friday from 9 a.m. to 6 p.m. and the truckload clericals work Monday through Friday from 8 a.m. to 6 p.m. Finally, the maintenance employee works a 40 hour a week schedule from Monday through Friday.

All employees are hourly paid and receive similar wages and benefits. The only distinction in benefits is that the warehouse employees on both sides of the facility are eligible for production and safety bonuses whereas the quick ship and truckload clericals are not eligible for these bonuses. The record does not disclose whether the maintenance employee and the inventory coordinator are eligible for these bonuses. The warehouse employees punch a timeclock and the quick ship and truckload clericals record their work hours on timesheets and turn them in to their immediate supervisors. As a result of limited parking, the quick ship clericals park in a different lot from that used by the warehouse employees on both sides of the facility and by the truckload clericals. A single lunchroom is available in the facility for the use of all the employees. It appears that the day shift warehouse employees on both sides of the facility take their lunches at noon and at least some of the quick ship clericals take their lunches at about the same time because of the shift schedule they are working. None of the employees wear uniforms. However, the warehouse employees who work on both sides of the facility are required to wear steel-toed boots for safety reasons. The quick ship clericals are also required to wear steel-toed boots while working in the warehouse area. This requirement is of recent vintage and it is not clear from the record whether it has ever been enforced. All positions involved with the possible exception of the inventory coordinator and the maintenance employee are entry level positions and no prior experience is required for filling any position.

The quick ship warehouse employees and the truckload warehouse employees perform traditional warehousing functions with the aid of forklifts and hand-held computers. Thus, they are involved in receiving and storing product and in picking and loading ordered product on trucks for shipment to customers. The hand-held computers are used to check product inventory into or out of the facility, record the movement of product from one location to another within the facility, or to make inventory searches by product and location. There apparently is some movement of warehouse employees from one side of the facility to the other. However, the record does not disclose the frequency of such movement or whether it is temporary or permanent.

The shipping of product begins when a warehouse employee receives a pick ticket that is generated by the quick ship or truckload clericals. The pick tickets contain information about the ordered product, the quantity needed, an order number, a customer number, a customer's address, the date and time the order was processed and the location in the facility where the product is stored. Warehouse employees come into direct contact with customers only on those rare occasions when a customer comes into the facility to pick up product.

QUICK SHIP AND TRUCKLOAD CLERICALS:

The quick ship clericals spend about 80 to 85 percent of their work time in the office area adjacent to the quick ship warehouse area. The quick ship clericals receive telephone and facsimile orders from customers, with most orders arriving by facsimile transmission. Order information is then entered into the inventory computer system and a pick ticket for the ordered merchandise is generated. The quick ship clericals also prepare bills of lading for shippers and frequently use the telephone to check on the status of product shipments. The quick ship pick tickets are transmitted to the quick ship warehouse employees in a variety of ways. Thus, in many instances the quick ship team captain or warehouse leadperson will retrieve the pick tickets from quick ship clericals for further distribution to quick ship warehouse employees. Quick Ship Coordinator Preston often takes the pick tickets out to the warehouse. Additionally, several times a day quick pick clericals will take pick tickets to the warehouse employees. Typically, a brief interchange of approximately 5 minutes' duration occurs when a quick ship clerical brings pick tickets to warehouse employees. However, the record discloses that the quick ship clericals and warehouse employees also interact to resolve problems with particular pick tickets, such as when product cannot be located. In this connection, pick tickets that are deficient in some manner are placed in a problem basket for later resolution. This resolution may include a computer and warehouse search for the product with the warehousemen working with quick ship clericals. The quick ship warehousemen also enter the quick ship clerical office for several reasons, including checking on the status of orders and clarifying addresses. However, this occurs infrequently during the course of a shift.

In addition to their order processing duties, the quick ship clericals are also regularly assigned to work on the United Parcel Service (UPS) line and to perform less-than-truckload (LTL) processing functions in the quick ship warehouse area. The record does not disclose how often they perform these tasks, only that these assignments are made when necessitated by production demands. The UPS line is equipped with a UPS computer system. On the UPS line product is "over-packed" and then put through the line. As it comes to the front of the line it is put on a scale and weighed. The shipping information is then entered into the UPS computer system, which produces an address label and establishes a charge for the shipping of the product.

The product is then placed on a pallet and loaded onto a truck. With regard to LTL processing, quick ship clericals may be involved in applying shipping labels to product that quick ship warehousemen pick and bring to the dock. The quick ship clericals then attach a packing slip to the product, an address label, and the particular LTL carrier's processing number. The quick ship clericals do not pick the product for shipping and they are not licensed to operate forklifts. It appears that quick ship clericals who are assigned to UPS and LTL tasks perform such duties in conjunction with quick ship warehousemen.

The truckload clericals have their desks in the Employer's main office area. They perform essentially the same order processing functions for the truckload operation as those performed by the quick ship clericals for the quick ship side of the warehouse operation. These duties include tracking down the status of in-transit inventory, producing pick tickets for ordered product and producing bills of lading for product that is to be shipped. In addition, they apparently receive telephone orders from customers, order office supplies and are involved in the billing process. The truckload clericals are occasionally in the truckload warehouse area for the purpose of picking up billing and receipts and to check on the status of an order or truckload. Warehousemen also approach the truckload clericals in the main office to bring in bills, check on orders and check part numbers. Warehousemen and team captains also enter the main office to retrieve the pick tickets for the truckload side of the warehouse. These pick tickets are generally placed on top of a filing cabinet in the main office.

INVENTORY COORDINATOR:

Susan Sowers is the Employer's inventory coordinator, a position she has held since about May 1, 1999. Prior to that time the Employer employed her as a quick ship clerical. Like the quick ship and truckload warehousemen, Sowers is licensed to operate a forklift. She spends about 75 to 80 percent of her work time physically in the warehouse, working in both the truckload and quick ship sides of the warehouse. The remainder of her work time is apparently spent at her desk in the main office area. Her principal duties are to check, correct and generally monitor inventory, to receive product and to physically move product from one location to another within the facility.

With regard to new product, Sowers is responsible for downloading information about the product into the computer system. Sowers activates the product within the system so that it is recognized by the system and is available to be picked. In connection with the movement of product, I note that Sowers and the truckload and quick ship warehouse employees assist each other on a daily basis in rearranging inventory within the facility. However, it is not clear from the record how much time is spent each day in this type of job-related interaction. In addition, Sowers spends some of her work time attempting to resolve order processing and inventory problems by pulling deficient pick tickets from the problem basket. It is not clear whether she performs this task in conjunction with warehouse employees.

CONCLUSION WITH RESPECT TO THE CLERICALS AND INVENTORY COORDINATOR:

The Petitioner aptly notes in its brief that “there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit or the *most* appropriate unit; the Act only requires that the unit be appropriate.” *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950). The Petitioner also correctly observes that the unit sought by a petitioning labor organization is always a relevant consideration, although it cannot be dispositive, and that a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *The Lundy Packing Company, Inc.*, 314 NLRB 1042, 1043 (1994); *Purity Food Stores*, 160 NLRB 651 (1966). I have carefully considered these well established precedents in assessing the unit composition issues.

It is clear from the record that the principal question to be resolved in determining unit placement of the quick ship and truckload clericals is whether they are essentially office clerical or plant clerical employees. The Board has long held that the distinction between office and plant clericals is rooted in community of interest concepts. *Minneapolis-Moline Co.*, 85 NLRB 597, 598 (1949). Moreover, the Board has consistently included warehouse clerical employees in overall warehouse units when the duties the clericals perform are integral to the functioning of the warehouse operations and the clericals regularly interact with the other warehouse employees in the course of performing these duties. *Fleming Foods, Inc.*, 313 NLRB 948-949 (1994); *John N. Hansen Co.*, 293 NLRB 63, 64-65 (1989); *S & S Parts Distributors Warehouse*, 277 NLRB 1293, 1296 (1985). Typical plant/warehouse clerical duties include maintaining and verifying inventory and formulating documents to facilitate production and dealing with matters associated with shipment of product. See, e.g., *Fleming Foods, Inc.*, supra; *Hamilton Halter Co.*, 270 NLRB 331 (1984). Here, all the inventory, customer service and order processing work performed by the disputed quick ship and truckload clericals is integral to the functioning of the warehouse. There is no evidence that the quick ship and truckload clericals perform any typing for managers or supervisors or perform any other traditional office clerical work.^{4/} Finally, the record establishes that the quick ship and truckload clericals regularly interact in the performance of their assigned duties with warehousemen who work on both sides of the facility and with their respective team captains.

I am mindful of the fact that the quick ship clericals and the truckload clericals have their primary work locations in separate offices and that they spend a substantial portion of their working hours using a telephone and a computer. I note, however, that the Board has held that the fact that clerical employees work in an office and utilize computers and other traditional office equipment does not determine their unit placement. *John N. Hansen, Co.*, supra, at 65, citing *S & S Parts Distributors*, supra; *Avon Products*, 250 NLRB 1479, 1486 (1980). Rather, the duties performed by the clericals and their community of interest with the other warehouse employees are determinative. Thus, warehouse clericals, who perform a significant portion of their duties in the same working environment with other warehouse employees, perform an integral function in the flow of the warehouse work, perform their work in close proximity to the other warehouse employees, have daily contact with warehousemen, share common overall supervision with the warehousemen and receive similar pay and fringe benefits are included in

^{4/} A caveat to this statement is that the truckload clericals apparently spend a small segment of their working time ordering office supplies; arguably an office clerical task.

the same unit with warehouse employees. *John N. Hansen*, supra, at 65. All these factors to a greater or lesser extent are applicable to the quick ship and truckload clericals herein. Based on the foregoing, the entire record and the arguments of the parties at the hearing and in their briefs, I find that the quick ship clericals and the truckload clericals are plant/warehouse clericals rather than office clerical employees and that they share a community of interest with the quick ship and truckload warehouse employees that mandate their inclusion in the same unit. In reaching this conclusion, I note that the Petitioner does not cite any precedent in its brief supporting a contrary result. Accordingly, I shall include the quick ship clericals and the truckload clericals in the unit found appropriate.

I turn now to a consideration of the unit placement of the inventory coordinator, Susan Sowers. Sowers spends 75 to 80 percent of her work time in the warehouse area where she is engaged in tracking warehouse inventory. She performs functions similar to those performed by warehouse employees with respect to the movement of inventory. Sowers also performs inventory functions similar in nature to some of the tasks performed by quick ship and truckload clericals. Sowers is primarily distinguished from the clericals by virtue of the fact that she reports directly to Gootee and has a desk in the main office area. I find, however, that these facts are insufficient to outweigh the strong community of interest that Sowers shares with the other employees included in the unit. Moreover, if Sowers were not included in the unit as a single employee, she could be left without the possibility of representation. Finally, I note that the Petitioner fails to cite any precedent in support of its position that Sowers should be excluded from the unit. Accordingly, I shall include the inventory coordinator in the unit found to be appropriate.

RELATIVES OF MANAGEMENT:

The final issue to be addressed is the Petitioner's contention that the daughter and daughter-in-law of Vice-President of Operations Gootee should be excluded from the unit found appropriate because of this familial relationship, Gootee's ability to affect their working conditions and because his daughter shares the same residence with him. However, the Board has long held that "[E]mployee relationships with supervisors, absent a showing of specific special privileges or benefits, are insufficient in and of themselves to warrant exclusion from the bargaining unit." *Cumberland Farms*, 272 NLRB 336 (1984), citing *Pargas of Crescent City*, 194 NLRB 616 (1971); see also, *Allen Services Company*, 314 NLRB 1060, 1062-1063 (1994). In *Cumberland Farms*, supra, the Board concluded that employees living in the same household with supervisory personnel were eligible to vote, absent any evidence that those employees had been accorded special privileges and benefits. Here, there is no evidence that Gootee's daughter or daughter-in-law have been accorded any special privileges or benefits. The fact that Gootee could affect their employment conditions is an insufficient basis under Board precedent to exclude Gootee's daughter and daughter-in-law from the unit. Finally, I note that there is no contention, and the record is devoid of any evidence, that Gootee has any ownership interest in the Employer which if it existed might require a different result.

Based on the foregoing and noting that I have included the warehouse clericals in the unit as a group, I find that the daughter and daughter-in-law of Vice-President Gootee share a community of interest with the other employees requiring their inclusion in the unit. Accordingly, I shall include them in the unit found appropriate.

STIPULATED SUPERVISION:

In accord with the stipulation of the parties and the record evidence, I shall exclude Gary Gootee, vice-president of operations; Dan Raver, warehouse team leader; Laurie Preston, quick ship coordinator; Wayne Traylor, quick ship team captain; Eric Derenburger, warehousemen team captain; Tim VanGundy, warehousemen team captain; Scott Stickel, warehousemen team captain; and Aaron Raver, warehousemen team captain, from the unit as supervisors within the meaning of Section 2(11) of the Act.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time truckload warehousemen, quick ship warehousemen, quick ship customer service representatives, truckload customer service representatives, the maintenance employee, and the inventory coordinator, employed by the Employer at the warehouse and distribution center located at 3800 Lockbourne Industrial Parkway, Columbus, Ohio, but excluding all office clerical employees, all managerial employees, and all guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit. ^{5/}

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Teamsters Local Union #284, affiliated with the International Brotherhood of Teamsters, AFL-CIO.**

^{5/} As the unit found appropriate is larger than that requested, the Petitioner is accorded 10 days in which to submit the requisite showing of interest to proceed to an election. In the event the Petitioner does not wish to proceed to an election in the broader unit, it may withdraw its petition without prejudice within 7 days of this decision.

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election subject to the Petitioner's submission of an adequate showing of interest. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **June 10, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **June 17, 1999**.

Dated at Cincinnati, Ohio this 3rd day of June 1999.

/s/ Richard L. Ahearn

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